



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 21 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the Form I-140, Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, a graphic designer and artist, seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an individual of exceptional ability in the sciences, the arts, or business. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner had not established that she qualifies for the classification sought.

On appeal, the petitioner submits a statement and supporting evidence.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

I. EXCEPTIONAL ABILITY

The issue under consideration is whether the petitioner qualifies as an individual of exceptional ability in the sciences, arts, or business. The petitioner filed the Form I-140 on December 19, 2013, seeking classification based on exceptional ability in the fields of graphic design and art.

A. Law

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. The regulation at 8

C.F.R. § 204.5(k)(3)(ii) provides that, to establish exceptional ability in the sciences, arts, or business, the petitioner must submit at least three of the following:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- (E) Evidence of membership in professional associations; or
- (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If a petitioner has submitted the requisite evidence, U.S. Citizenship and Immigration Services (USCIS) then determines whether the record demonstrates “a degree of expertise significantly above that ordinarily encountered” in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the evidentiary analysis required for the two classifications makes the court’s reasoning persuasive to the classification sought in this matter.

B. Analysis

The petitioner submitted evidence at the time of filing the Form I-140, in response to a May 29, 2014, Request for Evidence (RFE) from the director, and on appeal. We will consider the evidence as it relates to each of the evidentiary criteria for the classification sought.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The director found that the petitioner submitted sufficient evidence to satisfy this criterion and we affirm that finding.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The director found that the petitioner submitted sufficient evidence to satisfy this criterion and we affirm that finding.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The director stated that the petitioner did not claim or submit evidence to meet this criterion. The petitioner does not contest that finding, but states on appeal that the director failed to take into consideration that “there is no license required” to be a graphic designer or artist. The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides that a petitioner may submit “comparable evidence” if the listed criteria “do not readily apply to the beneficiary’s occupation.” Whether this criterion is applicable to the petitioner’s field rests not on whether such credentials are required, but on whether they exist at all.

The petitioner has not established the inapplicability of this criterion or submitted comparable evidence. We will therefore affirm the director’s finding.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

The director stated that the petitioner did not claim or submit evidence to meet this criterion. The petitioner’s appeal does not contest the director’s finding or offer additional arguments or evidence. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 2011) (plaintiff’s claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that she meets this regulatory criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

At the time of filing, the petitioner stated that she is a member of the [REDACTED]. The petitioner submitted a copy of a membership card, which did not include the petitioner’s name, but identified the organization as a “membership-based non-profit . . . devoted to self-improvement, personal advancement, and personal achievement.”

The director’s RFE requested documentary evidence to demonstrate that the [REDACTED] is in fact a professional association, or any other relevant evidence about this criterion. The petitioner’s

response to the RFE did not address this issue. The director found that the petitioner had not met this criterion, and the petitioner does not contest this finding on appeal or submit additional evidence. Therefore, she has abandoned this criterion. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. We find that the petitioner has not met this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F)

An introductory letter accompanying the Form I-140 described the petitioner as “an outstanding graphic artist” whose artwork has “drawn considerable attention in both her field as well as industry.” The letter discussed graphic design projects that the petitioner completed on behalf of clients, and described works of art that the petitioner has presented “in displays and exhibitions.” The petitioner also submitted numerous letters attesting to her abilities and accomplishments as a graphic designer and artist.

At the time of filing the Form I-140, the petitioner worked as a graphic designer for Mendelson and Associates, an advertising agency in [REDACTED] Tennessee. The agency’s director of creative services, [REDACTED] stated in a November 11, 2013, letter that he oversees production of [REDACTED] “the largest bilingual newspaper in the mid-southern U.S.” Mr. [REDACTED] stated that, upon being hired in 2007, the petitioner “quickly established herself as a creative powerhouse in our offices, taking over the entirety of our cover designs, almost immediately, a task which had previously been shared by three designers.” He stated that, in contrast to other designers, she “possesses an amazing talent in her ability to maximize creative potential in her projects with a minimal amount of time.” He further stated that the petitioner has shared her works of art through [REDACTED] community-related activities, allowing her to “enlighten our community.” Mr. [REDACTED] stated that the petitioner has also hosted art exhibitions in which she “displays her own creations in showings that are open to the public.”

In an October 28, 2013, letter, [REDACTED] stated that he worked as an “IT Senior Analyst” at [REDACTED] at a time when the petitioner did freelance work for three of the network’s television channels. Mr. [REDACTED] attested to the petitioner’s “unique sense of design,” and stated that her artistic style is “very distinctive and more creative compared to most others in the area.” In addition, he discussed the petitioner’s skills and abilities, stating that she is “high[ly] specialized in the image creative area,” and that she “astutely grasped the codes and the images that industry needs for reaching a specific market.”

The petitioner submitted a letter dated October 17, 2013, from [REDACTED] president of [REDACTED], a company in Colombia for which the petitioner developed a logo. Mr. [REDACTED] attested to the petitioner’s impressive, versatile, and specialized skills in graphic design and marketing, and he characterized her artistic style as “very distinctive compared to most others I have seen in the area.”

██████████ president of ██████████ a boutique Latin marketing and advertising agency in ██████████ Tennessee, previously worked as the operations manager for ██████████ where she worked directly with the petitioner. Ms. ██████████ discussed the petitioner's versatile abilities as a graphic designer and attested to the "excellent quality" of her work on a variety of projects, including "illustrations, Billboard designs, newspaper lay-out, sales package and posters/displays."

The petitioner submitted a letter from Dr. ██████████ MD, owner and medical director of ██████████ in ██████████ Tennessee. Dr. ██████████ stated that the petitioner's skillful promotion and marketing through art and advertising played a critical role in allowing her business to expand from a home medical visit corporation to a successful bilingual healthcare clinic. Dr. ██████████ described the broad range of skills and expertise that the petitioner brings to her projects, calling her a "one man shop '██████████'." In addition, she stated that she has one of the petitioner's works of art in her office, and that she has seen other artwork by the petitioner in "people's homes and offices."

██████████, identified as "Institutional Relations Manager" at ██████████ (██████████ on the letterhead), discussed the petitioner's work as art director for graphic design projects on behalf of the '██████████' in Venezuela. She stated that this work included the "very well received" design of a bilingual financial report for distribution to investment members in several countries, an annual "corporate kit" given to the board and international investors, and the promotion and advertising of a major bank event. Ms. ██████████ stated that the petitioner's "accomplishment in the field of graphic design is nothing short of exceptional," and that "[h]er graphic images have won recognition based on her hypothesis that visual communication transcends language, religion and culture barriers." Ms. ██████████ also stated that the petitioner "has performed art direction on many book, catalogs and magazines." In support of this assertion, the petitioner submitted copies of excerpts from a book and a professional directory, as well as from pamphlets, stamp collections, and a magazine produced by ██████████. Although not translated into English, each of the documents appears to list the petitioner as art director.

The petitioner also submitted a letter from ██████████, owner and art director for a graphic design studio in ██████████ Florida. Ms. ██████████ stated that she has known the petitioner for more than two years, but has admired her work "since 2007 when she changed the graphic look of a Latin Newspaper." Ms. ██████████ further stated that the petitioner is "among the premier professionals in the graphic design field," and that her art and graphic design work has influenced Ms. ██████████ own work.

Regarding the petitioner's exhibitions as an artist, the petitioner submitted images and promotional materials related to a collection of her paintings, entitled "██████████" which were displayed in the ██████████ from August 2-30, 2013. In addition, the petitioner provided a copy of a brochure indicating that her art was included in a Hispanic Heritage Month exhibit at the ██████████ in ██████████ in October 2013. The

petitioner submitted articles and reviews about these two exhibits from [REDACTED] and a [REDACTED] Spanish language newspaper called [REDACTED]

Finally, at the time of filing, the petitioner presented certificates of appreciation from the [REDACTED] and from the [REDACTED] Leadership Awards for her support of the event.

The director's RFE requested additional documentation to demonstrate achievements and significant contributions to the field that have been recognized by peers, governmental entities, or professional or business organizations. In a letter responding to the RFE, the petitioner identified her "field of exceptional ability" as "painting." The petitioner stated that her "[REDACTED]" series of paintings is a "particularly significant and influential set of artistic works," and that the letter from fellow artist [REDACTED] shows "strong recognition for [the petitioner's] work and how it has influenced her own work."

The petitioner submitted a letter from the director of communications at the [REDACTED] Public Library, stating that the petitioner's display at the [REDACTED] was "viewed by over 4,000 customers during the month they were on display and sparked much conversation which is what the library desires to do as its aim is to have customers connect, learn, and grow." The letter also stated that, as a result of the display's success, the library has requested that the petitioner return to the library in 2015 with another display and that "requests as such are rarely made." The petitioner stated that this letter represents "significant recognition of [her] work . . . from a government entity."

As additional evidence of peer "recognition of [the petitioner's] work," the petitioner submitted two additional letters. [REDACTED] identified as an artist and art educator, praised the petitioner's artistic skills and stated that she has personally been inspired by the petitioner's paintings and has shared them with her students as tools for teaching. [REDACTED], Professor and Chair of the Department of Art and the [REDACTED], stated that his "role in this letter is to assess as an external evaluator [the petitioner's] talent as a graphic designer." Professor [REDACTED] described the petitioner's skills and talents, and characterized her as "an excellent designer" and "one of its [sic] foremost talents in our field."

In his November 20, 2014 decision denying the petition, the director found that the petitioner did not meet this criterion. The director discussed some of the submitted letters, stating that they attested to the petitioner's skills "without providing specific information as to how her achievements made significant contributions to the industry or field." The director also discussed the media articles about the petitioner's artistic exhibitions, stating that they "do not show that the petitioner's work has attracted attention beyond the community level." The director found that the articles in [REDACTED] lacked objectivity because of the petitioner's connection to the paper, and that the petitioner did not submit circulation figures for [REDACTED] or a certified translation of the submitted art review from that paper.

On appeal, the petitioner objects to the director's characterization of her as only a "Graphic Designer (painting)," as it does not capture the broad range of specializations that she has mastered within the graphic design field, including: "Advertising Designer," "3D and Illustrator Designer," "Branding, and Identity Systems Designer," and "Publishing Designer." The petitioner states that her mastery of all of these specializations "is exactly what makes [her] unique and of extraordinary¹ ability." The petitioner contends that the director did not give sufficient weight to the letters in the record, which she states "are evidence of how my work has impacted and improved businesses, how I have created innovations and how I differ from my colleagues because of my professionalism, effectiveness, creativity and proactivity."

The plain language of this regulatory criterion requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." The submitted letters make clear that their authors consider the petitioner to be a highly gifted artist and to possess an uncommon level of skill and versatility as a graphic designer. The petitioner has established that her art exhibitions have been recognized at a local level by peers, newspapers, and the [REDACTED] Public Library, and that her art has personally inspired several other individual artists. However, the record does not show that these artistic accomplishments equate to "significant contributions" to the field of painting, and have been recognized as such. Similarly, the letters indicate that the petitioner has been recognized as a talented graphic designer by her current and former colleagues, and that her graphic design work has been of great importance to the clients that she has served, but not that she has been recognized as having significantly contributed to "the industry or field" of graphic design.

For the above reasons, we find that the petitioner has not met this criterion. As the petitioner did not submit evidence under at least three of the six listed criteria under 8 C.F.R. § 204.5(k)(3)(ii), she has not established eligibility for classification as an individual of exceptional ability in the sciences, arts, or business.

On appeal, the petitioner expresses concern that the director's "subjective" finding regarding her abilities may have been based on a devaluation of art and creativity in society. The eligibility determination for this classification is not based on a subjective evaluation of the petitioner's talent or the importance of her field. Rather, as stated above, the pertinent regulations set forth specific evidentiary requirements that the petitioner must meet. Our finding that the petitioner is not eligible for classification as an individual of exceptional ability is based on these evidentiary requirements and should not be read to disparage the petitioner's abilities or her fields of endeavor.

The petitioner's appeal also includes a discussion of the difficult situation that the petitioner's family will face if they are not able to stay in the United States, and evidence relating to alleged mistakes made by an immigration attorney in past immigration proceedings unrelated to the instant petition.

¹ While the petitioner uses the phrase "extraordinary ability" in her statement on appeal, that term corresponds to a different visa category than the one being considered in this decision. At issue in this proceeding is whether the petitioner has met the statutory definition of an individual of "exceptional ability," under 8 C.F.R. § 204.5(k)(3)(ii).

While we sympathize with the petitioner's situation, our role is limited to a review of the instant proceeding.

II. NATIONAL INTEREST WAIVER

The director made no finding on the merits of the petitioner's application for a national interest waiver of the job offer requirement. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. Because the petitioner has not established eligibility for the underlying immigrant classification, we need not reach the issue of whether the petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, will be in the national interest of the United States.

III. CONCLUSION

The petitioner has not established that she qualifies for classification as an alien of exceptional ability in the sciences, the arts, or business, and she is therefore ineligible for a waiver of the job offer requirement. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.